

1 KEKER & VAN NEST LLP
ROBERT A. VAN NEST - # 84065
2 BRIAN L. FERRALL - # 160847
DAVID SILBERT - # 173128
3 MICHAEL S. KWUN - # 198945
633 Battery Street
4 San Francisco, CA 94111-1809
Telephone: (415) 391-5400
5 Email: rvannest@kvn.com;
bferrall@kvn.com; dsilbert@kvn.com;
6 mkwun@kvn.com

SUSAN CREIGHTON, SBN 135528
SCOTT A. SHER, SBN 190053
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
1700 K Street NW, Fifth Floor
Washington, D.C., 20006-3817
Telephone: (202) 973-8800
Email: screighton@wsgr.com;
ssher@wsgr.com

7 JONATHAN M. JACOBSON, NY SBN 1350495
CHUL PAK (*pro hac vice*)
8 DAVID H. REICHENBERG (*pro hac vice*)
WILSON SONSINI GOODRICH & ROSATI
9 Professional Corporation
1301 Avenue Of The Americas, 40th Floor
10 New York, NY 10019-6022
Telephone: (212) 999-5800
11 Email: jjacobson@wsgr.com; cpak@wsgr.com;
dreichenberg@wsgr.com

12 Attorneys for Defendant ARISTA NETWORKS, INC.

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 CISCO SYSTEMS, INC.,
18 Plaintiff,
19 v.
20 ARISTA NETWORKS, INC.,
21 Defendant.

Case No. 5:14-cv-05344-BLF (NC)

**DEFENDANT ARISTA NETWORKS,
INC.'S OPPOSITION TO CISCO'S
ADMINISTRATIVE MOTION TO SEAL
PORTIONS OF TRIAL TRANSCRIPT
(ECF NOS. 699, 705, 711, 722, 734)**

Dept.: Courtroom 3, 5th Floor
Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

Pursuant to Civil Local Rule 7-11(b), Defendant Arista Networks, Inc. (“Arista”) hereby opposes the Administrative Motion to Seal Portions of the Trial Transcript filed by Plaintiff Cisco Systems, Inc. (“Cisco”) on February 17, 2017. ECF 768.

I. ARGUMENT

Cisco’s motion to seal testimony provided in open court during last year’s jury trial should be denied as untimely because Cisco failed to move to redact the disputed trial transcripts within 21 days of their filing with the Clerk as required by General Order No. 59. Because Cisco’s motion is nearly a month and a half late, the Court should deny it.

General Order No. 59 of the Northern District of California states that any party seeking to redact transcripts of Court proceedings must “[w]ithin five business days of the filing of an official transcript, ... file electronically a Notice of Intent to Request Redaction for any transcript in need of such redaction on the court-approved form[.]” *See* General Order No. 59 at ¶ 3. If such a notice is filed, General Order No. 59 requires that the party seeking the types of redactions that Cisco seeks here file “within 21 calendar days from the filing of the transcript with the Clerk, or longer if ordered by the Court,” a “noticed motion served on all parties and the court reporter.” *Id.* at ¶ 4. The Court did not set any longer deadlines for seeking redactions to trial transcripts;¹ therefore, the 5-calendar-day and 21-calendar-day deadlines of General Order No. 59 apply.

Cisco’s administrative motion to seal portions of the trial transcript does not comply with General Order No. 59. The five transcripts which it seeks to redact were filed on December 1, 2016 (ECF 699), December 6, 2016 (ECF 705 and 711), December 8, 2016 (ECF 722), and December 12, 2016 (ECF 734). As a preliminary matter, Cisco did not even file the required “Notice of Intent to Request Redaction” for December 5, one of the transcript days it now seeks to redact. *See* ECF 720, 721, 741, 742, and 743 (Cisco’s Notices, which do not include December 5). Moreover, Cisco *waited over two months* (a total of 66 calendar days) after filing its last

¹ To the contrary, the Court instructed the parties on November 28, 2016: “When you get your transcript you have three days to communicate with the court reporter of sections, phrases to be redacted from the public record. If she hears nothing from you within three days, it gets posted on the public record. So I will put that ball in your court.” ECF 687 (Transcript of Proceedings Held on 11/28/2016) at 531:7–11.

1 “Notice of Intent to Request Redaction” before filing this administrative motion. *See* ECF 743
2 (Cisco’s last Notice of Intent to Request Redaction, filed on Dec. 13, 2016). Under the deadlines
3 to seek redactions set in Paragraph 4 of General Order No. 59, Cisco’s motion is 45 calendar days
4 late.

5 For this reason alone, Cisco’s motion should be denied as untimely.

6 **II. CONCLUSION**

7 For the foregoing reasons, Cisco’s motion to seal portions of the trial transcript fails to
8 comply with the requirements and deadlines of General Order No. 59, and should be denied.

9
10
11
12 Dated: February 21, 2017

KEKER & VAN NEST LLP

13
14 By: /s/ Robert A. Van Nest

15 ROBERT A. VAN NEST
16 BRIAN L. FERRALL
17 DAVID SILBERT
18 MICHAEL S. KWUN

19 Attorneys for Defendant
20 ARISTA NETWORKS, INC.
21
22
23
24
25
26
27
28